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FM SECSTATE WASHDC

TO AMEMBASSY MANILA IMMEDIATE

INFO AMEMBASSY JAKARTA

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E.O. 11652: GDS

TAGS: PBOR

SUBJECT: LOS: DETAILED ACCOUNT OF U.S./INDONESIAN TALKS

REF: STATE 071224, MANILA 4189

FOR THE AMBASSADOR

1. FOLLOWING IS A DETAILED ACCOUNT OF U.S./INDONESIAN TALKS HELD IN JAKARTA ON MARCH 25 AND 26, WHICH IS FOR YOUR INFORMATION ONLY.

2. WE LOOK FORWARD TO PROVIDING YOU WITH A SPECIAL BRIEFING AFTER YOUR ARRIVAL IN WASHINGTON.

3. ALSO YOU SHOULD BE AWARE THAT IT IS OUR INTENTION TO SEEK AN UNDERSTANDING BEFORE CARACAS ON SPECIFIC TEXT

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OF ARCHIPELAGO ARTICLES SATISFACTORY TO ARCHIPELAGIC AND

MARITIME STATES.

4. THE U.S. DELEGATION WAS LED BY JOHN NORTON MOORE, CHAIRMAN, THE NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA, AND DEPUTY SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR THE LAW OF THE SEA CONFERENCE.

5. THE DISCUSSIONS WERE CORDIAL AND THEY REFLECTED THE FACT THAT EACH SIDE APPRECIATED THE NECESSITY TO

ACCOMMODATE ARCHIPELAGIC AND NAVIGATIONAL INTERESTS.

6. IT WAS AGREED THAT FORUM FOR ACHIEVING MUTUAL GOALS SHOULD BE COMPREHENSIVE LOS TREATY GIVING LEGAL AFFIRMATION TO ARCHIPELAGIC PRINCIPLE AND LEGAL PROTECTION FOR VITAL NAVIGATIONAL INTERESTS OF MARITIME STATES. TIMING OF CARACAS CONFERENCE MADE EARLY UNDERSTANDING ESSENTIAL. IF AT ALL POSSIBLE TREATY TEXTS SHOULD BE AGREED BEFORE START OF CARACAS CONFERENCE.

7. U.S. COULD SUPPORT ARCHIPELAGIC PRINCIPLE AS UNIVERSALLY ACCEPTED LEGAL CONCEPT IF THERE WERE 1) REASONABLE LIMITATION OF ARCHIPELAGIC PRINCIPLE TO ISLAND NATIONS PER OBJECTIVE DEFINITIONAL CRITERIA; (2) FULL PROTECTION OF TRANSIT THROUGH AND OVER ARCHIPELAGO, AND (3) INDONESIAN SUPPORT FOR UNIMPEDED PASSAGE OF STRAITS USED FOR INTERNATIONAL NAVIGATION.

8. U.S. DISTRIBUTED FOLLOWING PAPERS ON (A) ELEMENTS CONCERNING DEFINITION OF ARCHIPELAGIC STATE AND (B) GUARANTEES TO ARCHIPELAGIC STATE COVERING ARCHIPELAGIC PASSAGE:

(A) ELEMENTS CONCERNING DEFINITION OF ARCHIPELAGIC STATE

(1) AN ARCHIPELAGIC ISLAND STATE WHOSE COMPONENT ISLANDS AND OTHER NATURAL FEATURES FORM A SINGLE INTRINSIC

GEOGRAPHICAL, CULTURAL, ECONOMIC AND POLITICAL ENTITY MAY
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DRAW ARCHIPELAGIC LINES CONNECTING OUTER POINTS OF THE OUTERMOST ISLANDS OF THE ARCHIPELAGO PROVIDED THAT SUCH LINES ENCLOSING THE ENTIRE ISLAND GROUP DO NOT ENCLOSE AN AREA OF WATER WHICH WILL RESULT IN A LAND-TO-WATER RATIO OF GREATER THAN 1:5 AND PROVIDED THAT THE MAXIMUM LENGTH OF ANY SUCH LINES SHALL NOT EXCEED 80 NAUTICAL MILES.

(2) WATERS WITHIN ARCHIPELAGIC LINES SHALL BE DESIGNATED

ARCHIPELAGIC WATERS.

(3) FOR THE PURPOSE OF COMPUTING THE LAND-TO-WATER RATIO IN PARAGRAPH 1, LAND AREAS SHALL INCLUDE WATERS WITHIN REEFS AND LAGOONS OF ATOLLS.

(B) GUARANTEES TO THE ARCHIPELAGIC STATE COVERING ARCHIPELAGIC PASSAGE.

(1) THE TREATY WOULD SPECIFY THAT THE RIGHT OF NAVIGATION IS A RIGHT OF TRANSIT THROUGH AND OVER THE ARCHIPELAGO--

THAT IS, A RIGHT OF UNIMPEDED ARCHIPELAGIC PASSAGE OF THE ARCHIPELAGO--IN THE NORMAL MODE FOR VESSELS AND AIRCRAFT.

(2) THE TREATY WOULD SPECIFY THAT THE TRANSITING VESSEL OR AIRCRAFT SHOULD TRANSIT THE ARCHIPELAGO WITHOUT UNREASONABLE DELAY.

(3) THE TREATY WOULD SPECIFY THAT TRANSITING VESSELS OR AIRCRAFT SHALL REFRAIN FROM ANY THREAT OR USE OF FORCE IN VIOLATION OF THE CHARTER OF THE UNITED NATIONS AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF THE ADJACENT ARCHIPELAGO STATE.

(4) THE TREATY COULD PROVIDE THAT ARCHIPELAGIC PASSAGE WOULD TAKE PLACE IN DESIGNATED PASSAGE AREAS. SUCH PASSAGE AREAS WOULD:

(A) INCLUDE ALL NORMAL PASSAGE ROUTES THROUGH ARCHIPELAGIC WATERS, AND WITHIN SUCH ROUTES ALL NORMAL NAVIGATIONAL

CHANNELS, AND (B) INCLUDE AN AREA WHICH AT ALL POINTS IS SECRET

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NOT LESS THAN THE NARROWER OF:

(1) 80 PERCENT OF THE AREA BETWEEN THE NEAREST POINTS OF LAND ON THE MAIN ISLAND; I.E., NOT DRYING ROCKS OR SHOALS, OR (2) 100 NAUTICAL MILES

(5) THE TREATY WOULD PROVIDE THAT THE ARCHIPELAGIC STATE COULD REQUIRE NOTIFICATION FOR ANY VESSEL OR AIRCRAFT DEPARTING FROM THESE PASSAGE AREAS BECAUSE OF FORCE MAJEURE DISTRESS OR OTHER CIRCUMSTANCES. (SOME PROVISION WOULD BE MADE TO PROTECT SHIPPING (E.G., SHALLOW DRAUGHT VESSELS) OUTSIDE PASSAGE AREAS.)

(6) THE TREATY WOULD PROVIDE THAT THE ARCHIPELAGIC STATE MAY, WITHOUT DISCRIMINATION AMONG SHIPS, TEMPORARILY SUSPEND NAVIGATION IN CERTAIN AREAS OUTSIDE ARCHIPELAGIC

PASSAGE AREAS, IF SUCH SUSPENSION IS NECESSARY TO ITS SECURITY. SUCH SUSPENSION WOULD BE DULY PUBLISHED.

NOTE: THIS IS AN EFFORT TO SET OUT GENERAL PRINCIPLES GUARANTEEING A BALANCE BETWEEN THE INTERESTS OF ARCHIPELAGO STATES AND THE INTERESTS OF TRANSITING STATES. THESE PRINCIPLES WOULD BE REFLECTED IN A LAW OF THE SEA TREATY AND DO NOT NECESSARILY STATE APPROPRIATE TREATY PROVISIONS AS WRITTEN. THE PRECISE METHOD OF DELINEATION OF PASSAGE AREAS UTILIZING THESE PRINCIPLES WOULD BE DETERMINED AFTER FURTHER CONSULTATIONS.

9. INDONESIANS WERE GENERALLY POSITIVE ABOUT SUGGESTED U.S. SOLUTIONS WHILE STRESSING NEED FOR CONSULTATIONS WITH OTHER ARCHIPELAGIC CLAIMANTS BEFORE MAKING COMMITMENTS. THEY CLEARLY STATED PROPOSED U.S. DEFINITION OF ARCHIPELAGO MET INDONESIAN CONCERNS. IT WAS AGREED THAT INDONESIANS WOULD APPROACH PHILIPPINES AND FIJI FOR REACTIONS WHILE U.S. WOULD INFORM OTHER MARITIME STATES. EACH AGREED TO HOLD EARLY CONSULTATIONS AND TO EXCHANGE INFORMATION ON OUTCOME OF CONSULTATIONS.

10. YOU SHOULD BE AWARE THAT WE HAVE ASKED OUR EMBASSIES IN LONDON, PARIS, TOKYO AND MOSCOW TO BRIEF HOST GOVERNMENTS ON THE TALKS AND REQUESTED THOSE GOVERNMENTS' VIEWS SOONEST. WE INTEND TO COORDINATE FULLY
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WITH MEMBERS OF THE GROUP OF FIVE. WE ARE SAYING TO THE OTHER MEMBERS OF THE GROUP OF FIVE THAT A NEW APPROACH BY THEM OR OTHERS TO ARCHIPELAGIC STATES (INDONESIA, PHILIPPINES, FIJI, MAURITIUS) AT THIS TIME COULD

SERIOUSLY UNDERCUT EFFORT TO REACH ACCOMMODATION ON THIS DELICATE ISSUE. U.S. PLANS TO DISCUSS INITIATIVES FULLY AT GROUP OF FIVE HEADS OF DELEGATION DISCUSSIONS IN LONDON. WE ARE ALSO POINTING OUT TO THE OTHER MEMBERS OF THE GROUP OF FIVE THAT WE INDICATED TO INDONESIANS THAT IF AN UNDERSTANDING WHICH PROTECTED OUR INTERESTS WERE NOT REACHED WE WOULD BE REQUIRED TO OPPOSE ARCHIPELAGO PRINCIPLE. KISSINGER

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